COMSAT CORPORATION

Original

Bruce A. Henoch
General Attorney

6560 Rock Spring Drive
Bethesda, MD 20817
Telephone 301 214 3347
Fax 301 214 7145
Telex 197800
Internet bruce.henoch@comsat.com

DOCKET FILE COPY ORIGINAL

February 17, 1998

Ms. Magalie Salas, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: In the Matter of Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, IB Docket No. 96-111

Dear Ms. Salas:

COMSAT Corporation, by its attorneys and pursuant to Section 1.429(f) of the Commission's Rules, files herewith an original and eleven copies of the Opposition of COMSAT Corporation to Petitions for Reconsideration filed in the above-referenced proceeding. An additional copy is enclosed; please date-stamp this copy and return it to the courier.

Please refer any questions to the undersigned.

Yours truly,

Bruce A. Henoch
General Attorney

Original

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of the Commission's	)	
Regulatory Policies to Allow Non-U.S.-	)	
Licensed Space Stations to Provide	)	IB Docket No. 96-111
Domestic and International Satellite	)	
Service in the United States	)	
	)	
and	)	
	)	
Amendment of Section 25.131 of the	)	
Commission's Rules and Regulations	)	CC Docket No. 93-23
to Eliminate the Licensing Requirement	)	RM-7931
for Certain International Receive-Only	)	
Earth Stations	)	
	)	
and	)	
	)	
COMMUNICATIONS SATELLITE	)	
CORPORATION Request for Waiver of	)	
Section 25.131(j)(1) of the Commission's	)	File No. ISP-92-007
Rules as it Applies to Services Provided	)	
via the INTELSAT K Satellite	)	

OPPOSITION OF COMSAT CORPORATION TO PETITIONS FOR RECONSIDERATION

Keith H. Fagan
Neal T. Kilminster
Bruce A. Henoch

COMSAT Corporation
6560 Rock Spring Drive
Bethesda, Maryland 20817
(301) 214-3000

February 17, 1998

Table of Contents

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of the Commission's	)	
Regulatory Policies to Allow Non-U.S.-	)	
Licensed Space Stations to Provide	)	IB Docket No. 96-111
Domestic and International Satellite	)	
Service in the United States	)	
	)	
and	)	
	)	
Amendment of Section 25.131 of the	)	
Commission's Rules and Regulations	)	CC Docket No. 93-23
to Eliminate the Licensing Requirement	)	RM-7931
for Certain International Receive-Only	)	
Earth Stations	)	
	)	
and	)	
	)	
COMMUNICATIONS SATELLITE	)	
CORPORATION Request for Waiver of	)	
Section 25.131(j)(1) of the Commission's	)	File No. ISP-92-007
Rules as it Applies to Services Provided	)	
via the INTELSAT K Satellite	)	

OPPOSITION OF COMSAT CORPORATION TO PETITIONS FOR RECONSIDERATION

COMSAT Corporation ("COMSAT"), by its attorneys, hereby files its consolidated Opposition to Petitions for Reconsideration filed in the above-captioned by PanAmSat Corporation ("PanAmSat"), GE American Communications, Inc. ("GE"), and IDB Mobile Communications, Inc. ("IDB"). The petitions filed by PanAmSat and GE raise arguments that either are patently frivolous, concern issues beyond the scope of the Commission's authority, or simply repeat -- without any new factual support -- contentions that the petitioners have made

many times before in their ongoing attempt to bar additional competition from the market for domestic fixed satellite services. In addition, IDB's petition seeks to inject into this proceeding a matter that is near and dear to IDB's heart but that has nothing to do with the Commission's ruling in the Report & Order (and is, in any case, without merit). Accordingly, the Commission should reject these petitions as baseless.

I. Introduction and Summary

On November 26, 1997, the Commission released a Report & Order in its DISCO II rulemaking proceeding.[1] The Report & Order was the culmination of a long-running proceeding to determine the circumstances under which non-U.S. licensed satellites would be permitted to serve the U.S. domestic market.[2] Because satellites of INTELSAT and Inmarsat (collectively referred to by the Commission as the intergovernmental organizations, or "IGOs") are not licensed in the United States, the issue of permitting these satellites to serve the U.S. market was discussed in all notices of proposed rulemaking in the proceeding and was addressed in comments

---

[1] *In re Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States*, IB Docket No. 96-111, FCC 97-399 (released Nov. 26, 1997) ("Report & Order").

[2] *See In re Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States*, IB Docket No. 96-111, FCC 96-210 (released May 14, 1996) ("DISCO II" Notice of Proposed Rulemaking, or "Notice"). The Commission's efforts in this docket are actually the last in a series of related actions designed to "allow foreign carriers into the U.S. communications market and permit U.S. licensed satellite systems to provide both domestic and international services." Notice at n.2 (*citing Market Entry and Regulation of Foreign-Affiliated Entities*, 11 FCC Rcd 3873 (1995); *Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems*, 11 FCC Rcd 2429 (1996) (the "DISCO I" Order)).

filed by COMSAT and many other participants.

In this Report & Order, the Commission ruled, *inter alia*, that COMSAT would be required "to make an appropriate waiver" of its INTELSAT- and Inmarsat-based privileges and immunities in order to be eligible to provide domestic services using IGO space segment.[3] The Report & Order also would require COMSAT to demonstrate that provision of such service would promote competition and otherwise be in the public interest. COMSAT has filed a Petition for Review of these provisions of the Report & Order in the U.S. Court of Appeals for the D.C. Circuit on the grounds that the Commission lacked authority to abrogate COMSAT's statutory and treaty-based privileges and immunities and failed to take COMSAT's lack of market power into account in refusing to immediately authorize COMSAT to provide domestic services.[4] Those issues are properly before the court and will not be discussed herein. This Opposition addresses only: (1) the arguments made by PanAmSat and GE that the Commission should not have addressed COMSAT's provision of domestic service using IGO space segment at all, and that the Commission should apply special scrutiny to present and future spin-offs of INTELSAT and Inmarsat;[5] and (2) the improper and erroneous contention of IDB that the Commission should clarify, or decide on reconsideration, that COMSAT does not have an exclusive right to provide

---

[3] Report & Order ¶ 126.

[4] COMSAT Corp. v. FCC, No. 98-1011 (D.C. Cir. filed Jan. 12, 1998).

[5] Petition for Reconsideration of GE American Communications, Inc., IB Docket No. 96-111, filed Jan. 5, 1998 ("GE"); Petition for Reconsideration of PanAmSat Corp., IB Docket No. 96-111, filed Jan. 5, 1998 ("PanAmSat").

Inmarsat space segment in the United States.[6]

Contrary to GE's assertions, it was entirely proper for the Commission to consider in this proceeding the issue of whether COMSAT should be permitted to provide service in the U.S. domestic market. The Commission has compiled a complete record on this issue over the past several years, and GE's suggestion that the Commission should have delayed consideration of this issue does nothing more than illustrate GE's reliance on dilatory tactics. With regard to the claims of PanAmSat and GE that COMSAT has the ability to engage in anticompetitive behavior, COMSAT notes that petitioners provide nothing to rebut the facts in the record showing that COMSAT has no market power and derives no anticompetitive benefits from its association with INTELSAT and Inmarsat. As to the claims by GE and PanAmSat that the Commission should apply special scrutiny to present or future IGO affiliates providing service in the United States, the Commission does not have the authority under the WTO Agreement to apply a different standard of review to these private spin-offs than it applies in evaluating the applications from other companies licensed by WTO-member countries. Finally, IDB's contention that the Commission should have used this proceeding to address a completely unrelated matter is improper and should be rejected.

---

[6] Petition for Clarification or, in the Alternative, Reconsideration of IDB Mobile Communications, Inc., IB Docket No. 96-111, filed Jan. 5, 1998 ("IDB").

II. Discussion

A. The Commission Should Reject as Frivolous the Contention that Agency Action With Respect to IGO Entry Into the U.S. Market Would Be Premature.

Of all the meritless arguments raised by petitioners in this proceeding, the most transparently frivolous is GE's baseless contention that the Commission acted prematurely here in considering at all the issue of IGO entry into the domestic U.S. market. GE essentially argues that the WTO agreement did not "require" consideration of IGO entry into the U.S. market, that there are many issues that must be "assessed," and that Congress may some day in the future enact legislation dealing with INTELSAT and Inmarsat. These self-serving arguments by a current provider of domestic satellite service are directly at odds with the clear administrative record in this proceeding.

In contending that the Commission acted prematurely because the WTO agreement did not "require" consideration of entry into the U.S. market using IGO satellites, GE has ignored the purpose and history of the DISCO II proceeding. This rulemaking predates the existence of the 1997 WTO Agreement.[7] The Commission opened -- and has maintained -- the DISCO II docket with a broader purpose than simply implementing the WTO Agreement. From the beginning, the stated goal has been to develop "a uniform framework" under which all "non-U.S. satellites" could enter the domestic market and thereby boost the competitive choices available to U.S.

[7] *See supra note 2.*

consumers.[8] The IGO systems have been considered to be among these "non-U.S. satellites" from the beginning.[9] The WTO agreement is but one element of this proceeding -- and the fact that IGOs are not specifically covered by the WTO agreement is utterly irrelevant to the issue of whether the Commission was within its authority here in considering use of IGO satellites in the U.S.

GE also argues that consideration of the IGOs in this Report & Order was premature because there are many issues that must be "assessed" before the Commission could consider provision of domestic service using IGO satellites and because "market access issues relating to the IGOs require special scrutiny." These very issues have been an integral part of every Commission notice and order in the DISCO II proceeding and have been the subject of numerous detailed comments made by many parties, including GE.[10] A full record on these issues has thus

---

[8] Notice at ¶ 1; *see also Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States*, IB Docket No. 96-111, FCC 97-252, ¶ 1 (released July 18, 1997) (DISCO II Further Notice of Proposed Rulemaking, or "Further Notice") (seeking comment on "whether, and to what extent, our DISCO II proposals should be changed both with respect to countries and services covered by the WTO Basic Telecom Agreement and those that are not.").

[9] Notice at ¶¶ 60-74; Further Notice at ¶¶ 31-36.

[10] *See, e.g.*, Comments of GE American Communications, Inc., IB Docket No. 96-111 (filed July 15, 1996) ("GE First Round Comments"); Reply Comments of GE American Communications, Inc., IB Docket No. 96-111 (filed Aug. 16, 1996) ("GE First Round Reply Comments"); Comments of GE American Communications, Inc., IB Docket No. 96-111 (filed Aug. 21, 1997) ("GE Second Round Comments"); Reply Comments of GE American Communications, Inc., IB Docket No. 96-111 (filed Sept. 5, 1997) ("GE Second Round Reply Comments"); Comments of PanAmSat Corp., IB Docket No. 96-111 (filed July 15, 1996) ("PanAmSat First Round Comments"); Reply Comments of PanAmSat Corp., IB Docket No. 96-111 (filed Aug. 16, 1996) ("PanAmSat First Round Reply Comments"); Comments of PanAmSat Corp., IB Docket No. 96-111 (filed Aug. 21, 1997) ("PanAmSat Second Round Comments"); Reply Comments of PanAmSat Corp., IB Docket No. 96-111 (filed Sept. 5, 1997) ("PanAmSat Second Round Reply Comments").

been developed.[11] For example, the Commission in the first DISCO II notice devoted 13 paragraphs to the issues surrounding the IGOs, including discussion of "privileges and immunities" of the IGOs and COMSAT, the "openness" of INTELSAT route markets, a possible approach in which the competitive effects of COMSAT entry into the domestic market would be assessed, pending IGO privatization, and the status of future IGO affiliates.[12] GE filed comments in response to this notice, in which it advanced essentially the same arguments that it made in response to the instant Report & Order.[13] Among other things, GE argued that the Commission should delay consideration of provision of domestic service using IGO satellites until the conclusion of the WTO talks.[14] Thus, according to GE's own comments, the time for the Commission to consider these issues arrived upon conclusion of the WTO Agreement last February.[15] GE's recurring insistence that the Commission delay consideration of these issues

---

[11] As mentioned above, COMSAT believes that the record in this proceeding clearly shows that provision of domestic service by COMSAT would have only positive effects on competition and has raised this issue in its Petition for Review of the Report & Order at the D.C. Circuit. It is worth noting that COMSAT sought review in the Court of Appeals rather than file a petition for reconsideration with the Commission only because it is apparent that filing a petition at the Commission would have been futile. By way of illustration, COMSAT notes that it filed a Petition for Partial Reconsideration and Immediate Interim Relief in the DISCO I proceeding on April 11, 1996 seeking limited immediate entry in order to relieve a capacity shortage. To the present date, this Petition has not been acted upon by the Commission.

[12] Notice at ¶¶ 62-74.

[13] GE First Round Comments at 5-8, 10-11.

[14] *Id.* at 1-2, 5-8 (arguing that "moving forward" with the DISCO II proceeding before the WTO negotiations end "would be premature")

[15] In July 1996, GE "believe[d] that the best course for the Commission . . . is to defer this proceeding pending completion of the current round of WTO negotiations. The Commission can then act on a more complete record once the WTO process has been concluded." *Id.* at 6.

until some other event has occurred pointedly demonstrates that GE is employing dilatory tactics for its own competitive ends.

Likewise, with regard to GE's claim that the Commission should delay such consideration given the legislation pending before the U.S. Congress, COMSAT notes that proposed legislation is just that; it has no force of law whatsoever.[16] Not only would it be improper and arbitrary for the Commission to take action or to delay taking action merely because a bill has been introduced in Congress, it would be highly irresponsible. The Commission's obligation is to implement the law as it exists today, not what GE speculates that it might say tomorrow.[17]

B. Petitioners Provide Nothing to Rebut the Facts in the Record Showing That COMSAT Has No Ability to Engage in Anticompetitive Behavior in Providing Service to the U.S. Domestic Market

GE and PanAmSat in their petitions reprise the same arguments about the state of competition in the marketplace that they have made many times before.[18] These latest efforts of

---

[16] *See, e.g.*, Mt. Emmons Mining Co. v. Babbitt, 117 F.3d 1167 (10th Cir. 1997) (agency may not cease to apply current law in anticipation of a change in the law).

[17] GE's suggestion (p. 7) that the Commission should "model" its domestic entry requirements on the pending bill is even more absurd. GE is essentially suggesting that the Commission unilaterally implement sweeping policy reform not yet even voted on by Congress, much less enacted into law.

[18] *See, e.g.*, GE Second Round Comments at 5-7; GE Second Round Reply Comments at 5-8; PanAmSat Second Round Comments at 6-7; PanAmSat Second Round Reply Comments at 5-7; Opposition of PanAmSat L.P., RM No. 7913 (filed Aug. 25, 1994) (opposing COMSAT's 1994 petition for partial deregulation of its INTELSAT-based services); Petition for Reconsideration of PanAmSat, RM No. 7913 (filed Sept. 16, 1996) (seeking reconsideration of the Commission's order granting COMSAT partial regulatory relief for its INTELSAT-based switched voice and private line services); Petition to Deny of PanAmSat Corp., File No. 14-SAT-ISP-97 (filed Dec. 12, 1996) ("PanAmSat Petition to Deny Streamlined Video") (opposing COMSAT's 1996 petition for partial deregulation of its INTELSAT-based video services);

GE and PanAmSat, like many in the past, are notably devoid of factual support to counter the data before the Commission demonstrating that COMSAT has no market power in the international marketplace -- and thus no ability to leverage its international position so as to enjoy an unfair advantage in the domestic marketplace.[19] Nonetheless, GE and PanAmSat claim that COMSAT, despite its modest share of the relevant markets, has some magical ability to engage in anticompetitive conduct, and that they (GE and PanAmSat) simply cannot compete "on a level playing field."[20] It is undisputed that both PanAmSat and GE have the ability to operate as non-

---

Petition to Deny of PanAmSat Corp., File No. 60-SAT-ISP-97 (filed June 16, 1997) ("PanAmSat Petition to Deny Reclassification") (opposing COMSAT's 1997 petition for further deregulation of its INTELSAT-based services); Application for Review of PanAmSat Corp., File No. 14-SAT-ISP-97 (filed Sept. 15, 1997) (seeking review of Bureau order granting COMSAT partial regulatory relief for its INTELSAT-based video services). The Commission, in turn, has evaluated those arguments many times before. *See In re COMSAT Corporation Petition for Partial Relief From the Current Regulatory Treatment of COMSAT World Systems' Switched Voice, Private Line, and Video and Audio Services,* RM No. 7913, FCC 96-349 (released Aug. 15, 1996) (the "Partial Relief Order") (granting partial deregulation for COMSAT's INTELSAT-based switched voice and private line services); *In re COMSAT Corporation Petition for Partial Relief From the Current Regulatory Treatment of COMSAT World Systems' Video and Audio Services,* File No. 14-SAT-ISP-97, DA 97-1741 (released Aug. 14, 1997) (the "Streamlined Video Order") (granting partial deregulation for COMSAT's INTELSAT-based video services).

[19] Both PanAmSat and GE argue that the Commission should, in addition to requiring COMSAT to waive its immunity as Signatory, also require that the IGOs themselves waive their own immunity from suit as a condition of entry into the U.S. market. Imposing such a requirement would, of course, be completely beyond the jurisdiction of the Commission, which exercises no such control over INTELSAT and Inmarsat. Moreover, even if such an order would be lawful or appropriate, COMSAT does not control either organization and thus has no ability to implement such a condition. For these reasons, the Commission should reject these suggestions.

[20] To maintain perspective as to the relative size, position, and bargaining power of the petitioners, who allegedly find themselves unable to compete on a "level playing field," COMSAT notes that PanAmSat is a subsidiary of Hughes Electronics Corp., a company with 1996 revenues of $15.9 billion, which is in turn owned by General Motors Corp., with 1996 revenues of $164 billion. GE Americom is a subsidiary of the General Electric Co., with 1996 revenues of $79.1 billion. By way of comparison, COMSAT Corporation had 1996 revenues of just over $1 billion. (All information obtained from the respective 1996 corporate annual reports).

common carriers, have no restrictions on their corporate structures, their rates, their earnings, or their ability to react to market forces, and that PanAmSat in particular is "the world's leading commercial provider of satellite-based communications services."[21] COMSAT, the most federally regulated communications company in the United States, faces all these regulatory constraints. Moreover, COMSAT has essentially no presence in the U.S. domestic marketplace, maintains only a 20 percent share of the international voice and data markets and holds just a 45 percent share of the international video services market. Yet despite these uncontroverted facts, GE and PanAmSat attempt to contend that COMSAT would have the ability, because of its affiliation with INTELSAT and Inmarsat, to run roughshod over its competitors if allowed to enter the U.S. domestic market. As COMSAT has shown time and again, this simply is not true.[22]

GE and PanAmSat do not even attempt to argue that COMSAT today has any market power or ability to manipulate rates in the international voice and data market or in the full-time international video market, each of which the Commission has found to be fully or substantially

---

[21] PanAmSat World Wide Web Page, www.panamsat.com/cover.htm, visited January 2, 1998.

[22] *See, e.g.,* COMSAT Corporation Petition for Partial Relief From the Current Regulatory Treatment of COMSAT World Systems' Switched Voice, Private Line, and Video and Audio Services, RM No. 7913 (filed July 1, 1994) (petition seeking partial deregulation of COMSAT's INTELSAT-based switched voice and private line services); COMSAT Corporation Petition for Partial Relief From the Current Regulatory Treatment of COMSAT World Systems' Video and Audio Services, File No. 14-SAT-ISP-97 (filed Oct. 25, 1996) (seeking partial deregulation of COMSAT's INTELSAT-based video services); COMSAT Corporation Petition for Forbearance From Dominant Carrier Regulation and for Reclassification as a Non-Dominant Carrier, File No. 60-SAT-ISP-97 (filed April 24, 1997) (the "Non-Dominance Petition") (seeking further deregulation of COMSAT's INTELSAT-based services); Consolidated Reply of COMSAT Corporation, File No. 60-SAT-ISP-97 (filed July 8, 1997) (the "Non-Dominance Reply").

competitive.[23] Instead, they merely trot out, once again, alleged misdeeds from the now distant past. The supposed boycott to which PanAmSat refers concerns events that occurred more than a dozen years ago. That PanAmSat repeats this mantra at virtually every occasion makes it no more recent or relevant to the issues at hand.[24] Similarly, there is no merit to PanAmSat's contention that the Article XIV consultation process under the INTELSAT treaty could operate as a "competitive weapon."[25] The economic harm component of Article XIV no longer even exists, and the technical harm component -- which has never prevented a private system from being created -- largely mirrors ITU requirements. No party has made any showing that these procedures (past or present) give COMSAT (or even INTELSAT) any market power in either the domestic or the international markets. Such a notion is refuted by reality: these alleged obstacles clearly have not prevented PanAmSat from becoming the large and globally successful operation that it is today.

PanAmSat also argues that COMSAT retains market power in the provision of occasional use video and for switched service to so-called thin route countries. With regard to occasional use video, however, even ABC acknowledges that "the revenues involved are . . . small compared to the revenues involved from most other services," too small in fact to have any impact

---

[23] Partial Relief Order at ¶¶ 21,23; Streamlined Video Order at ¶ 2.

[24] *See, e.g.,* PanAmSat Petition to Deny Streamlined Video at 5; PanAmSat Petition to Deny Reclassification at 16.

[25] PanAmSat Petition at 8.

whatsoever on the competitive policies of other nations.[26] Thus, even ABC, one of the largest users of occasional video services, understands that provision of occasional use video services affords operators such as COMSAT no ability to leverage their position or to cross-subsidize other services.[27]

Given these facts, PanAmSat's expression of fear concerning any bundling of international and domestic services by COMSAT is sheer fantasy. It should be obvious that the only places where COMSAT could potentially, to use PanAmSat's words, "leverag[e] Intelsat's privileged market access overseas" for competitive purposes in the domestic U.S. market would be on the thin routes.[28] However, the notion that COMSAT could threaten the competitiveness of the domestic marketplace from routes constituting -- under COMSAT's conservative estimate -- less than 2% of U.S. international telecommunications revenues today does not withstand even passing scrutiny.[29] Indeed, this 2% figure may, in fact, wildly overstate COMSAT's "strength"; PanAmSat's recent disclosures indicate that, of the 71 countries COMSAT identified in January

---

[26] Partial Petition for Reconsideration of ABC, Inc., IB Docket No. 96-111, filed Jan. 5, 1998, at 5.

[27] *See also, e.g.,* Non-Dominance Petition at 41, 70-72; Non-Dominance Reply at 36-41 (discussing downward pressure on rates created by, for example, COMSAT's global uniform pricing policy and effect of growing capacity supply).

[28] PanAmSat at 9.

[29] It also presumes that COMSAT could somehow condition thin route access on the purchase of domestic service as well. Perhaps PanAmSat, as a non-common carrier, attempts to impose such "bundling" in its contracts, but just how COMSAT could do so is entirely unexplained.

1997 as thin routes, PanAmSat provides at least some satellite service to all but 15 of them.[30]

C. The Commission Lacks Authority to Treat IGO Spin-Off Companies Licensed by WTO-Member Countries Differently Than Other Systems Licensed by Such Countries

PanAmSat and GE also argue that the Commission must apply special scrutiny to present and future privatized IGO spin-offs such as ICO and INC, and that the Commission should retain the ability to keep these companies out of the U.S. market. As we argued in our reply comments, however, the Commission could not apply special scrutiny or conditions to IGO affiliates that is not applied to other satellite operators because doing so would fly in the face of U.S. obligations under the WTO accord.[31]

If the IGO spun-off satellite companies are licensed by WTO members, then the U.S. is required to apply to them the same rules it applies to U.S. and other WTO-licensed satellites. Doing so would be a clear violation of the most favored nation (MFN) obligation in the GATS framework.

The arguments of GE and PanAmSat are nothing more than yet another effort by U.S. satellite operators to shut the U.S. market to legitimate competition, even from operators licensed by WTO countries. As private companies, ICO does not have, and INC will not have, *any* treaty-

---

[30] Compare The Brattle Group, Telecommunications Service to "Thin Route Countries "An Update, January 1998, Table 2 (submitted Jan. 16, 1998, in FCC File No. 60-SAT-ISP-97) with Letter of Henry Goldberg, Esq., dated Feb. 6, 1998 (attachments listing nations to which PanAmSat provides international and domestic satellite services).

[31] COMSAT Reply Comments at 15-18.

based privileges or immunities. Further, ICO is based, and INC will be based, in the home markets of WTO-member countries that have made full commitments to open their markets to U.S.-licensed satellites.[32] There are simply no grounds for treating private affiliates or spin-offs of INTELSAT or Inmarsat that are based in WTO member countries any differently than other WTO-based operators.

The February 12, 1997, letter from the U.S. Trade Representative, Ambassador Barshefsky, makes clear that the review standards applicable to all entrants apply equally to IGO affiliates. The letter reiterates that, in all circumstances, "[e]xisting U.S. communications and antitrust law, regulation, policy and practice will continue to apply to license applicants if a GBT deal goes into effect."[33] COMSAT has never argued that U.S. antitrust law or competitive policy should not be applied. As we noted in our comments, there is nothing in the WTO Agreement that abrogates the ability of the U.S. to apply U.S. law or policy to IGO affiliates or to anyone else, as long as those laws and policies are facially neutral and are applied evenhandedly to service providers from the U.S. and other WTO-member nations. COMSAT contends only that the same standards must be applied across the board, and that this scrutiny will be more than sufficient to detect any anticompetitive relationships between the IGOs and their affiliates.[34]

---

[32] ICO is a U.K. company. INC is slated to be headquartered in and licensed by the Netherlands.

[33] Letter from Charlene Barshefsky, United States Trade Representative - Designate, to Neil Bauer, Orion Network Systems, Inc., Feb. 12, 1997, at 2.

[34] COMSAT notes that it is working closely with the U.S. government to ensure that INC is structured in a pro-competitive manner and that it operates at arms-length from INTELSAT. "Restructuring INTELSAT to Create an Affiliate (INC)," Contribution of the Party and Signatory of the United States to the Twenty First Assembly of Parties, 14 April, 1997.

D. IDB's Claim Regarding Provision of Inmarsat Services in the United States is Not Properly Raised in This Proceeding.

In its petition, IDB takes issue with a single sentence in the Report & Order:

> Since COMSAT is currently the sole provider of INTELSAT and Inmarsat capacity in the United States and the U.S. has no obligation to allow access under the WTO Basic Telecom Agreement, the entry standard we set out is limited to applications from COMSAT.[35]

Specifically, IDB contends that the Commission should "clarify or reconsider" the statement that "COMSAT is currently the sole provider of INTELSAT and Inmarsat capacity in the United States. . . ."

The statement on which IDB focuses is a simple factual observation, rather than identification of (much less a ruling on) an issue in this proceeding. It states only a simple fact: that COMSAT is currently the only provider of Inmarsat (and INTELSAT) satellite capacity in the United States.

In fact, IDB never actually takes exception to this statement. Instead, IDB seeks to use this statement to bootstrap into this proceeding an issue not raised in the Report & Order, but which is of particular concern to IDB: whether the Commission may authorize entities other than COMSAT to provide Inmarsat satellite (space segment) capacity in the United States.

IDB has a particular interest in this issue because, since September of last year, it has purported to be purchasing Inmarsat satellite capacity for its U.S. land earth stations from a foreign Inmarsat Signatory, contrary to its service contract with COMSAT, its FCC authorization,

---

[35] IDB at 1, quoting Report & Order, ¶ 118.

the Inmarsat Act[36], and the Inmarsat Operating Agreement. Based on this contention, IDB has refused to pay COMSAT for the Inmarsat satellite capacity it has used. As a result, COMSAT has been forced to file suit against IDB to recover damages for breach of our service contract with IDB.

The Commission should reject this flagrant attempt to use this rulemaking, at this late stage, to obtain a declaratory ruling on this issue. And it should not allow IDB to draw it into the middle of a contract dispute between two carriers.[37]

---

[36] 47 U.S.C. § 752(a)(1),(3); *see also* 47 U.S.C. § 752(c)(4) (COMSAT may "establish, own, and operate the United States share of the jointly owned international space segment and associated ancillary facilities."); *cf.* 47 U.S.C. § 752(d) (placing corresponding financial obligations on COMSAT); 47 U.S.C. § 753(c)(3).

[37] In any event, the contention raised by IDB is meritless. COMSAT has demonstrated on several occasions that, by law, it is the only entity authorized to provide Inmarsat space segment in the United States. *See, e.g.*, Reply of COMSAT Mobile Communications, File No. ITC-97-274, filed July 17, 1997, pp. 3-10, which we hereby incorporate by reference. The Commission's orders cited by IDB granting authority to IDB and other carriers to provide Inmarsat services do not support IDB's contention that the Commission may authorize carriers other than COMSAT to provide Inmarsat space segment to U.S. earth stations.

III. Conclusion

For the reasons discussed herein, the petitions for reconsideration filed by PanAmSat, GE, and IDB should be denied.

Respectfully submitted,

By: _____

Keith H. Fagan
Neal T. Kilminster
Bruce A. Henoch

COMSAT CORPORATION
6560 Rock Spring Drive
Bethesda, Maryland 20817
(301) 214-3000

February 17, 1998

Certificate of Service

I, Bruce A. Henoch, hereby certify that a true and complete copy of the foregoing Opposition of COMSAT Corporation to Petitions for Reconsideration was sent today by U.S. Mail, postage prepaid, to the following:

Cheryl A. Tritt
Charles H. Kennedy
Morrison & Foerster
2000 Pennsylvania Ave., NW
Washington, DC 20006-1888

Alfred M. Mamlet
Steptoe & Johnson
1330 Connecticut Ave., NW
Washington, DC 20036

Randolph J. May
Sutherland, Asbill & Brennan
1275 Pennsylvania Ave., NW
Washington, DC 20004-2404

Peter A. Rohrbach
Hogan & Hartson
555 Thirteenth Street, NW
Washington, D.C. 20004

Henry Goldberg
Goldberg, Godles, Wiener & Wright
1229 19th St., NW
Washington, DC 20036

Bruce A. Henoch

February 17, 1998

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
MARITIME TELECOMMUNICATIONS NETWORK, INC.	)	File No. ITC-97-274
	)	
Application for Authority Pursuant to Section 214 of the Communications Act, as amended, to Provide Global Facilities-Based and Resale Services	)	

REPLY OF
COMSAT MOBILE COMMUNICATIONS

COMSAT Corporation, through its COMSAT Mobile Communications unit ("COMSAT"), the U.S. Signatory to the International Mobile Satellite Organization ("Inmarsat"), replies to the "Opposition to Petition to Reject or Deny" ("Opposition") filed by Maritime Telecommunications Network, Inc. ("MTN") on July 7, 1997, in response to COMSAT's Petition to Reject or Deny ("Petition").

I. MTN's Application Does Not Provide Required Information.

As we showed in our Petition, the MTN Application does not comply with Section 63.18(e)(6) of the Commission's Rules, which requires MTN to "provide a description of the facilities and services for which it seeks authorization." In its Opposition, MTN contends that Section 63.18(e) should be read to require only "a general description sufficient to give the Commission and all relevant parties notice of the planned facilities and services." However, even if such a reading were warranted, the Application provides no such notice. The only information the Application provides of the land earth stations ("LESs") to be used, in MTN's proposed provision of both facilities-based and resale services,

is that MTN plans to use "land earth stations which have been approved for use with the INMARSAT system."[1] This fact is self-evident, since use of approved LESs is a prerequisite for provision of Inmarsat services. The MTN Application provides no information at all about the particular LESs to be used.

Moreover, MTN's reading of Section 63.18(e)(6) ignores Section 63.18's general requirement that the applicant submit "a statement showing how the grant of the application will serve the public interest, convenience, and necessity." Plainly, the description provided under Section 63.18(e)(6) must be sufficient to support such a finding. Without knowing what facilities MTN plans to construct or acquire or whose services it intends to resell, the Commission has no basis to make such a finding.

MTN asserts (at 4) that the Commission has previously accepted Inmarsat service applications in which the applicant has not specified what earth stations it would use. However, this assertion is not supported by the decisions it cites. Each of those decisions states that the applicant was seeking authority to provide Inmarsat services using particular earth stations identified in the application.[2] COMSAT is unaware of any

---

[1] Application at 1. In seeking to clarify this statement, MTN states that it "plans to utilize properly licensed and technically compliant LESs which are authorized to operate by their respective jurisdictions." (Opposition at 3.) Other than making clear that MTN intends to use foreign LESs, this statement does nothing to fill the descriptive vacuum in the Application.

[2] *See American Telephone & Telegraph Co.*, 11 FCC Rcd 5396, 5396 (1996) ("AT&T seeks to interconnect with IDB and Comsat earth stations") (hereinafter "*AT&T*"); *Seven Seas Communications,*

Commission grant of an Inmarsat service application where the applicant has failed to specify the facilities to be used.

MTN also errs in contending that its blanket assertion that it will provide the requested services in compliance with all Commission rules and regulations (Application at 4; *see* Opposition at 5) provides a sufficient basis to overcome its failure to provide the information required by the Rules. In any event, as we show in Part II, this assertion is contradicted by MTN's obvious intent to use foreign LESs to carry U.S.-originating fixed-to-mobile traffic, which contravenes the Inmarsat Act's requirements.

II. The Inmarsat Act Bars MTN's Intended Use of Foreign LESs to Carry U.S.-Originating Inmarsat Traffic.

As we showed in our Petition, in return for COMSAT's undertaking of substantial financial and operational obligations with regard to the establishment and operation of the Inmarsat system, Congress granted COMSAT an exclusive right to provide Inmarsat space segment to U.S. users. We have explained the statutory and decisional basis for this right in several prior proceedings. (*See* Petition at 4 & n.6.)

Inc., 9 FCC Rcd 1744, 1744 ("Seven Seas requests authority to provide service . . . in the AOR-East and AOR-West via the Laurentides, Quebec, Canada foreign land earth station ('LES') and in the POR via LES facilities at Hong Kong.") ("*Seven Seas*"); *IDB Mobile Communications, Inc.*, 8 FCC Rcd 5616, 5616 ("IDB requests authority to provide service . . . in the AOR-East and AOR-West via the Laurentides, Quebec, Canada foreign land earth station (LES) and in the POR via LES facilities at Hong Kong.") ("*IDB Mobile*").

MTN acknowledges that the statute grants COMSAT an area of exclusivity, but argues that that area is limited to provision of Inmarsat space segment where the service provider chooses to use LESs located in the United States. MTN contends that service providers are free to send U.S.-originating traffic through foreign LESs, at their option, in which case COMSAT has no role. According to MTN, the Commission has never recognized a COMSAT right to provide the space segment for all U.S.-originating traffic. MTN's assertions are simply incorrect.

The Inmarsat Act designates COMSAT to be "the sole operating entity of the United States for participation in INMARSAT for the purpose of providing international maritime satellite telecommunications service." The Act authorizes COMSAT to "participate in and . . . to sign the operating agreement . . . of INMARSAT as the sole designated operating entity of the United States."[3] While the Act expressly allows other U.S. entities (subject to FCC authorization) to own LESs accessing the Inmarsat system, it authorizes the Commission to grant authorizations only to COMSAT to provide "space segment channels of communications obtained from INMARSAT."[4]

---

[3] 47 U.S.C. § 752(a)(1),(3) (emphasis added); *see also* 47 U.S.C. § 752(c)(4) (COMSAT may "establish, own, and operate the United States share of the jointly owned international space segment and associated ancillary facilities."); *cf.* 47 U.S.C. § 752(d) (placing corresponding financial obligations on COMSAT).

[4] 47 U.S.C. §§ 752(f), 753(c)(3).